## REMARKS

This paper is submitted in reply to the Office Action dated February 3, 2004, within the three-month period for response. Reconsideration and allowance of all pending claims are respectfully requested.

In the subject Office Action, claims 1-5, 9-14 and 18-20 were provisionally rejected based upon the judicially created doctrine of double patenting over claims 7 and 26 of the copending Application No. 09/694,586 (the '586 Application) in view of U.S. Patent No. 6,108,699 to Moiin. Furthermore, claims 1-5, 9-14, and 18-20 were rejected under 35 U.S.C. § 102(a) as being anticipated by Moiin, and claims 6 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Moiin. The Examiner did indicate, however, that claims 7-8 and 16-17 were directed to patentable subject matter.

Applicants respectfully traverse the Examiner's rejections to the extent that they are maintained. In addition, Applicants have amended claims 7 and 16 to independent form. As claims 7 and 16 were found to be directed to patentable subject matter by the Examiner, reconsideration and allowance of these claims, as well as of claims 8 and 17 which depend therefrom, are therefore respectfully requested.

Now turning to the subject Office Action, and in particular, the rejection of claims 1-5, 9-14 and 18-20 based upon anticipation by Moiin, all of the independent claims at issue (claims 1, 9, 18 and 19) recite, at least in part, the concept of dynamically modifying a fragmentation size cluster communication parameter used in the communication of messages in a clustered computer system.

As discussed, for example, at page 15, lines 15-17, of the Application, a "fragmentation size cluster communication parameter" in the context of the invention is generally referred to as "the maximum size packet size, also referred to as a maximum transmission unit (MTU) that may be used for cluster messages." Put another way, a fragmentation size cluster communication parameter defines how a clustering message will be broken into multiple packets for transmission over a communications network.

Moiin is entirely silent with respect to the concept of fragmentation size, or of controlling fragmentation size within the context of a clustering environment. Instead, Moiin simply describes various routines for adding and removing nodes to and from a cluster. It is important to note, however, that Moiin discusses communications simply as being over an Ethernet network, and does not address the underlying protocols used for the messages communicated between nodes in a cluster, much less any particular cluster communication parameters used in such protocols.

Based upon the specific passages cited by the Examiner, it appears the Examiner may be analogizing the "cluster size" variable discussed in Moiin to a "fragmentation size cluster communication parameter" as set forth in Applicants' claims. However, it is evident from each mention of the "cluster size" parameter in Moiin that the term refers to the number of nodes (i.e., computers) that are members of a current or prospective cluster, and not to the sizes of individual messages communicated between nodes.

Indeed, the concept of a cluster size is relevant only to determining the number of messages that must be sent from a given node when communicating to other nodes in a cluster. Cluster size, however, is not appropriately considered a "communication parameter" as it has no bearing on the particular format or protocol for the actual messages sent between nodes. Indeed, if anything, the cluster size represents the content of clustering messages, rather than a parameter that controls how such messages are communicated between nodes.

Given that the concept of a "cluster size" is entirely different from the concept of a "fragmentation size" within the context of Applicants' claims, Applicants respectfully submit that Moiin cannot be read to anticipate any of Applicants' claims. Withdrawal of the Examiner's §102(a) rejection is therefore respectfully requested.

Furthermore, given that Moiin is completely silent with respect to the concept of dynamically modifying any cluster communication parameter, much less any communication parameter related to fragmentation size, Applicants also respectfully

submit that all of Applicants' claims are non-obvious over Moiin as well. In particular, communication parameters define how messages are sent and received by nodes, and as a result, changing communication parameters on different nodes in an active clustering environment is not simply a routine matter. Moiin, which does not even mention the communication parameters used to transmit messages between cluster nodes, fails to appreciate any of the problems that arise with respect to controlling these underlying communication parameters in an active clustering environment. Accordingly, reconsideration and allowance of claims 1-5, 9-14 and 18-20 are respectfully requested.

Next, with respect to claims 6 and 15, the Examiner rejects these claims as being non-obvious in view of Moiin. As discussed above with respect to independent claims 1 and 9, however, Moiin fails to disclose or suggest the underlying features of these independent claims. Moreover, Moiin does not even mention the concept of message queues. Accordingly, Applicants submit that claims 6 and 15 are also non-obvious over Moiin. Reconsideration and allowance of these claims are thus respectfully requested.

Finally, with respect to the Examiner's provisional double patenting rejection, Applicants traverse the Examiner's rejection based upon the fact that what is claimed in the '586 Application is not merely an obvious variation of what is claimed in the instant Application, or vice versa. On one hand, the independent claims of the '586 Application do not recite the concept of a "fragmentation size cluster communication parameter." On the other hand, the independent claims of the instant Application do not recite the concept of locally undoing a local cluster communication parameter modification operation, as is set forth in the independent claims for the '586 Application.

Furthermore, the addition of Moiin does not add anything to the provisional rejection. As noted above, with respect to the claims of the instant Application, Moiin does not disclose or suggest the concept of a fragmentation size cluster communication parameter. Furthermore, with respect to the claims of the '586 Application, Moiin does not disclose or suggest the concept of modifying any cluster communication parameters.

Accordingly, Applicants respectfully submit that the provisional double patenting rejection should be withdrawn. Reconsideration and withdrawal of the provisional rejection by the Examiner are therefore respectfully requested.

In summary, Applicants respectfully submit that all pending claims are novel and non-obvious over the prior art of record. Reconsideration and allowance of all pending claims are therefore respectfully requested. If the Examiner has any questions regarding the foregoing, or which might otherwise further this case onto allowance, the Examiner may contact the undersigned at (513) 241-2324. Moreover, if any other charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,

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Date

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